



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Motorola, Inc., a Delaware corporation;  
and Royal Indemnity Company, a  
Delaware corporation, as subrogee of  
Motorola, Inc.,

Plaintiffs,

v.

J.B. Rodgers Mechanical Contractors,  
Inc., an Arizona corporation; and Kinetic  
Systems, Inc., a California corporation,  
individually and/or collectively dba J.B.  
Rodgers/Kinetics Mechanical  
Contractors, Inc.,

Defendants.

CV 01-459-PHX-JAT

**ORDER**

Pending before the Court is Plaintiffs' Motorola, Inc. and Royal Indemnity Company's Motion for Reconsideration Re: October 3, 2002 Discovery Order (Doc. #84). For the reasons set forth below, the Court will deny the Motion.

**Background**

At an October 3, 2002 hearing regarding discovery disputes, the Court ordered Plaintiffs to produce a report prepared by Jack Peterson (Doc. #82). On the last day allowed for producing the report, October 11, 2002, Plaintiffs filed the pending Motion for Reconsideration. At the Court's request, Defendants filed a Response on December 5, 2002 (Doc. #94). No Reply was requested by the Court or filed by Plaintiffs.

97

1 **Discussion**

2 **I. LEGAL STANDARD**

3 The Court has discretion to reconsider and vacate a prior order. *Barber v. Hawaii*, 42  
4 F.3d 1185, 1198 (9<sup>th</sup> Cir. 1994); *United States v. Nutri-Cology, Inc.*, 982 F.2d 394, 396 (9<sup>th</sup>  
5 Cir. 1992). Motions for reconsideration are disfavored, however, and are not the place for  
6 parties to make new arguments not raised in their original briefs. *Northwest Acceptance*  
7 *Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925-26 (9<sup>th</sup> Cir. 1988). Nor is reconsideration  
8 to be used to ask the Court to rethink what it has already thought. *See United States v.*  
9 *Rezzonico*, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998) (citing *Above the Belt, Inc. v.*  
10 *Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E. D. Va. 1983)).

11 Although Plaintiffs do not cite a specific section of the Federal Rules of Civil  
12 Procedure, Plaintiffs cannot rely on Fed. R. Civ. P. 59(e) or 60(b).<sup>1</sup> Presumably, Plaintiffs  
13 seek reconsideration under either: (i) Fed. R. Civ. P. 54(b), which allows courts to revise  
14 “any order or other form of decision, however designated, which adjudicates fewer than all  
15 the claims or the right and liabilities of fewer than all the parties . . . , before the entry of  
16 judgment . . .”; or (ii) the Court’s inherent common-law authority “to rescind an interlocutory  
17 order over which it has jurisdiction . . . .” *Los Angeles v. Santa Monica Baykeeper*, 254 F.3d  
18 882, 887 (9<sup>th</sup> Cir. 2001). While the common law and Rule 54(b) may provide distinct  
19 sources for this Court’s authority to reconsider its rulings, it appears that the approach should  
20 be the same under both. *Cf. Souza v. Ashcroft*, 2001 U.S. Dist. LEXIS 10219, \*9 n.2 (N.D.  
21 Cal. 2001) (treating both sources as providing equivalent basis for reconsidering an  
22 interlocutory order).

23 Thus, it is necessary to determine what standard this Court should apply in  
24

---

25 <sup>1</sup> Because this Court’s order of October 3, 2002, did not “end[] the litigation on the  
26 merits and leave[] nothing for the court to do but execute the judgment,” the challenged order  
27 is not a final judgment or appealable interlocutory order. *Catlin v. United States*, 324 U.S.  
28 229, 233 (1945). Thus, Plaintiffs cannot avail themselves of Fed. R. Civ. P. 59(e) or 60(b)  
which only apply to reconsideration of “final judgments and appealable interlocutory orders.”  
*Balla v. Idaho State Bd. of Corrections*, 869 F.2d 461, 466-67 (9<sup>th</sup> Cir. 1989).

1 reconsidering its interlocutory orders. District of Arizona Local Rule 1.10(p) provides, in  
2 pertinent part, that no “response to a motion for reconsideration or clarification shall be filed  
3 unless ordered by the Court. If the Court is inclined to grant a motion for reconsideration,  
4 or otherwise desires a response before ruling, it shall order opposing counsel to respond.”  
5 The District of Arizona Local Rules do not establish a standard for reviewing motions for  
6 reconsideration, but at least two cases decided in the District of Arizona have posited a  
7 standard for review.

8 Plaintiffs cite to one of those cases, *Qureshi v. IRS*, 1994 U.S. Dist. LEXIS 9124, \*4  
9 (D. Ariz. 1994), for the proposition that reconsideration is appropriate “when it is necessary  
10 to correct a manifest error of law or fact.” (Doc. #84 at 2.) While Plaintiffs have accurately  
11 described a statement in *Qureshi*, they neglect to set forth the actual standard for review  
12 described in the next paragraph of that opinion:

13 A workable standard regarding the granting of motions to reconsider was  
14 expressed as follows in *Bahrs v. Hughes Aircraft Co*, 795 F. Supp. 965, 967  
15 (D. Ariz. 1992): ‘A motion to reconsider must provide a valid ground for  
16 reconsideration by showing two things. First, it must demonstrate some valid  
reason why the Court should reconsider its prior decision. Second, it must set  
forth facts or law of a strongly convincing nature to induce the Court to reverse  
its prior decision.’

17 *Qureshi*, 1994 U.S. Dist. LEXIS 9124 at \*4-5.

18 In a later case, *Saini v. Immigration and Naturalization Service*, 64 F.Supp.2d 923,  
19 925 (D. Ariz. 1999), another Arizona District Court judge adopted the standard for  
20 reconsideration set forth in *Above the Belt, Inc.*, 99 F.R.D. at 101. The *Saini* court stated that  
21 a motion for reconsideration should be granted only if “(1) the Court has patently  
22 misunderstood a party; (2) the Court has made a decision outside the adversarial issues  
23 presented to it; (3) the Court has made an error not of reasoning but of apprehension; or (4)  
24 where there has been a controlling or significant change in the law or facts since the  
25 submission of the issue to the Court.” 64 F.Supp.2d at 925.<sup>2</sup>

---

26  
27 <sup>2</sup> This Court has previously evaluated a motion for reconsideration of an interlocutory  
28 order using the *Saini* standard. See *PAC-FAB, Inc. v. Sunline International USA*, CIV-00-  
963-PHX-JAT at 1-2 (D. Ariz. July 11, 2002) (order denying reconsideration). For the

1 Although both *Saini* and *Qureshi* are persuasive, the Court is also informed by the  
2 standards employed by other District Courts. While the District of Arizona has not  
3 promulgated a local rule regarding the standard for reconsideration, many of the United  
4 States District Courts in the Ninth Circuit have adopted such rules.

5 **A. Local Rules from the District Courts of the Ninth Circuit:**

6 District of Hawaii. The District of Hawaii has adopted a local rule that  
7 establishes the following three-part test for reconsideration of interlocutory orders:

8 Motions for reconsideration of interlocutory orders may be brought only upon  
9 the following grounds:

- 10 (a) Discovery of new material facts not previously available;  
11 (b) Intervening change in law;  
12 (c) Manifest error of law or fact.

13 Dist. Haw. L.R. 60.1 (December 1, 2002); *see also Kenney v. Paderes*, 2002 U.S. Dist.  
14 LEXIS 23819, \*3 n.1 (D. Haw. 2002).

15 Central District of California. The local rule for the Central District of  
16 California provides a standard similar to District of Hawaii's, with two notable exceptions.  
17 First, the third prong of the analysis is limited to errors of fact. Second, no motion for  
18 reconsideration can urge an argument that has been already advanced to the court.

19 L.R. 7-18 Motion for Reconsideration. A motion for reconsideration of the  
20 decision on any motion may be made only on the grounds of (a) a material  
21 difference in fact or law from that presented to the Court before such decision  
22 that in the exercise of reasonable diligence could not have been known to the  
23 party moving for reconsideration at the time of such decision, or (b) the  
24 emergence of new material facts or a change of law occurring after the time  
25 of such decision, or (c) a manifest showing of a failure to consider material  
26 facts presented to the Court before such decision. No motion for  
27 reconsideration shall in any manner repeat any oral or written argument made  
28 in support of or in opposition to the original motion.

Cent. Dist. Cal. L.R. 7-18 (October 2001).

24 Northern District of California. The Northern District of California has  
25 adopted a local rule that requires leave of the court before filing a motion for reconsideration,  
26

27  
28 reasons set forth below, however, the Court declines to continue to employ the *Saini* standard  
for reconsideration of interlocutory orders.



1 and prohibits motions for reconsideration that repeat arguments already presented to the  
2 court. While the standard of review mirrors that of the District of Hawaii and the Central  
3 District of California, it expands on significant aspects of those rules:

4 7-9. Motion for Reconsideration.

5 (a) Leave of Court Requirement. Before the entry of a judgment  
6 adjudicating all of the claims and the rights and liabilities of all the parties in  
7 a case, any party may make a motion before a Judge requesting that the Judge  
8 grant the party leave to file a motion for reconsideration of any interlocutory  
order made by that Judge on any ground set forth in Civil L.R. 7-9 (b). No  
party may notice a motion for reconsideration without first obtaining leave of  
Court to file the motion.

9 (b) Form and Content of Motion for Leave. A motion for leave to file a  
10 motion for reconsideration must be made in accordance with the requirements  
of Civil L.R. 7-9. The moving party must specifically show:

11 (1) That at the time of the motion for leave, a material difference in  
12 fact or law exists from that which was presented to the Court before entry of  
the interlocutory order for which reconsideration is sought. The party also must  
13 show that in the exercise of reasonable diligence the party applying for  
reconsideration did not know such fact or law at the time of the interlocutory  
14 order; or

15 (2) The emergence of new material facts or a change of law  
occurring after the time of such order; or

16 (3) A manifest failure by the Court to consider material facts or  
17 dispositive legal arguments which were presented to the Court before such  
interlocutory order.

18 (c) Prohibition Against Repetition of Argument. No motion for leave to file  
19 a motion for reconsideration may repeat any oral or written argument made by  
the applying party in support of or in opposition to the interlocutory order  
20 which the party now seeks to have reconsidered. Any party who violates this  
restriction shall be subject to appropriate sanctions.

21 (d) Determination of Motion. Unless otherwise ordered by the assigned  
22 Judge, no response need be filed and no hearing will be held concerning a  
motion for leave to file a motion to reconsider. If the judge decides to order the  
23 filing of additional papers or that the matter warrants a hearing, the judge will  
fix an appropriate schedule.

24 N. Dist. Cal. L.R. 7-9 (Feb. 2003).

25 Eastern District of California. The local rule for the Eastern District of  
26 California provides that the burden is on the movant to show “new or different facts or  
27 circumstances” and to explain why those facts or circumstances were not previously  
28 submitted to the Court.

1 (k) Applications for Reconsideration. Whenever any motion has been  
2 granted or denied in whole or in part, and a subsequent motion for  
3 reconsideration is made upon the same or any alleged different set of facts, it  
4 shall be the duty of counsel to present to the Judge or Magistrate Judge to  
whom such subsequent motion is made an affidavit or brief, as appropriate,  
setting forth the material facts and circumstances surrounding each motion for  
which reconsideration is sought, including:

- 5 (1) when and to what Judge or Magistrate Judge the prior motion  
was made,  
6 (2) what ruling, decision or order was made thereon,  
7 (3) what new or different facts or circumstances are claimed to exist  
which did not exist or were not shown upon such prior motion, or what other  
grounds exist for the motion, and  
8 (4) why the facts or circumstances were not shown at the time of the  
prior motion.

9  
10 E. Dist. Cal. L.R. 78-230(k) (May 8, 2002).

11 Southern District of California. The local rules for the Southern District of  
12 California are substantially similar to those for the Eastern District of California. *See* S. Dist.  
13 Cal. L.R. 7.1(i).

14 Western District of Washington. The local rules for the Western District of  
15 Washington provide as follows:

16 (h) Motions for Reconsideration.

- 17 (1) Standard. Motions for reconsideration are disfavored. The court  
18 will ordinarily deny such motions in the absence of a showing of manifest  
error in the prior ruling or a showing of new facts or legal authority which  
could not have been brought to its attention earlier with reasonable diligence.

19 W. Dist. Wash. L.R. 7(h) (January 2002).

20 District of Guam. Finally, the District of Guam has also adopted a local rule  
21 that adopts a three-part standard of review that limits reconsideration to facts and law that  
22 were not considered in the original ruling:

23 (i) Motion for Reconsideration. A motion for reconsideration of the  
24 decision on any motion may be made only on the grounds of

- 25 (1) a material difference in fact or law from that presented to the  
Court before such decision that in the exercise of reasonable diligence could  
26 not have been known to the party moving for reconsideration at the time of  
such decision, or,  
27 (2) the emergence of new material facts or a change of law  
occurring after the time of such decision, or,  
28 (3) a manifest showing of a failure to consider material facts  
presented to the Court before such decision.

1 No motion for reconsideration shall in any manner repeat any oral or written  
2 argument made in support of or in opposition to the original motion.

3 Dist. Guam L.R. 7.1(i) (September 29, 2000).<sup>3</sup>

4 **B. Common Standards in the Various Local Rules:**

5 The local rules adopted by the various District Courts are not identical, but they  
6 provide enough similarities for this Court to adduce common approaches to evaluating  
7 motions for reconsideration.

8 New Facts: All of the local rules allow reconsideration based on new material  
9 facts that were not previously known. Most of the rules require that the movant show either  
10 that: (i) the facts arose after the original order; or (ii) the facts were not known and could not  
11 have been known through reasonable diligence at the time that the original decision. *E.g.*,  
12 Cent. Dist. Cal. L.R. 7-18(a); N. Dist. Cal. L.R. 7-9(b)(1); W. Dist. Wash. L.R. 7(h)(1).

13 Change in Law: Similarly, almost all of the local rules allow reconsideration  
14 based on an intervening change in the law. *E.g.* Dist. Guam L.R. 7.1(i)(2); Dist. Haw. L.R.  
15 60.1(b); Cent. Dist. Cal. L.R. 7-18(b); N. Dist. Cal. L.R. 7-9(b)(2).

16 Failure to consider arguments: One of the local rules allows reconsideration  
17 where there was a “manifest failure by the Court to consider material facts or dispositive  
18 legal arguments which were presented to the Court.” N. Dist. Cal. L.R. 7-9(b)(3). It is more  
19 common, however, to allow reconsideration solely when the court has failed to consider  
20 factual, as opposed to legal, arguments. *See* Cent. Dist. Cal. L.R. 7-18(c); Dist. Guam L.R.  
21 7.1(i)(3).

22 Repeated Arguments: Almost all of the local rules prohibit motions for  
23 reconsideration based on arguments already presented to and rejected by the court. *See* Cent.  
24 Dist. Cal. L.R. 7-18 (“No motion for reconsideration shall in any manner repeat any oral or  
25 written argument made in support of or in opposition to the original motion.”); N. Dist. Cal.

---

26  
27 <sup>3</sup> The local rules of the District of Alaska address motions for reconsideration solely  
28 from a procedural viewpoint, and do not provide a standard for review. *See* Dist. Alaska  
L.R. 59.1 (May 2003).

1 L.R. 7-9(c) (“No motion for leave to file a motion for reconsideration may repeat any oral  
2 or written argument made by the applying party in support of or in opposition to the  
3 interlocutory order . . . .”); Dist. Guam L.R. 7.1(i) (“No motion for reconsideration shall in  
4 any manner repeat any oral or written argument made in support of or in opposition to the  
5 original motion.”).

6 Manifest Error: Only two Districts allow reconsideration in the case of  
7 “manifest error.” See Dist. of Haw. L.R. 60.1(c); W. Dist. Wash. L.R. 7(h)(1).

8 In light of the foregoing, the Court concludes that the standard adopted by the Central  
9 District of California captures the most common elements of the various local rules. The  
10 Court also finds that the Central District of California’s standard best balances the competing  
11 interests of judicial accuracy and judicial economy. Accordingly, this Court adopts the  
12 following standards on which motions for reconsideration will be granted:

- 13 (1) There are material differences in fact or law from that presented to the Court  
14 and, at the time of the Court’s decision, the party moving for reconsideration  
15 could not have known of the factual or legal differences through reasonable  
16 diligence;
- 17 (2) There are new material facts that happened after the Court’s decision;
- 18 (3) There has been a change in the law that was decided or enacted after the  
19 Court’s decision; or
- 20 (4) The movant makes a convincing showing that the Court failed to consider  
21 material facts that were presented to the Court before the Court’s decision.

22 No motion for reconsideration shall repeat in any manner any oral or written argument  
23 made in support of or in opposition to the original motion.

## 24 II. ANALYSIS

25 Plaintiffs urge reconsideration on the grounds that the report prepared by Jack  
26 Peterson is protected by the work-product/trial preparation material doctrines. (Doc. #84 at  
27 3-4.) However, Plaintiffs specifically argued this same point in the Scheduling Conference  
28 Memorandum (Doc. #83 at 4-5) and in oral argument before this Court (Doc. #82).



1 Moreover, Plaintiffs have not shown material differences in fact or law that were not and  
2 could not have been presented to the Court prior to its decision. Nor do Plaintiffs allege new  
3 facts, an intervening change in the law, or that the Court failed to consider facts that were  
4 before it. Accordingly, Plaintiffs' Motion for Reconsideration will be denied.

5 Accordingly,

6 **IT IS THEREFORE ORDERED** that Plaintiffs' Motorola, Inc. and Royal Indemnity  
7 Company's Motion for Reconsideration Re: October 3, 2002 Discovery Order (Doc. #84) is  
8 **DENIED.**

9 DATED this 17 day of June, 2003.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
James A. Teilborg  
United States District Judge